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(Original Signature of Member)

107<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

**H. R.** \_\_\_\_\_

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**IN THE HOUSE OF REPRESENTATIVES**

Mr. CANNON (for himself and Mr. BOUCHER) introduced the following bill;  
which was referred to the Committee on \_\_\_\_\_

\_\_\_\_\_  
**A BILL**

To amend title 17, United States Code, and for other  
purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Music Online Competi-  
5       tion Act of 2001”.

1 **SEC. 2. EXEMPTION OF CERTAIN PERFORMANCES IN ON-**  
2 **LINE AND PHYSICAL RETAIL ESTABLISH-**  
3 **MENTS.**

4 (a) EXEMPTION.—Section 110(7) of title 17, United  
5 States Code, is amended—

6 (1) by striking “(7)” and inserting “(7)(A)”;

7 (2) by striking “by a vending establishment”  
8 and inserting “or of a sound recording by digital  
9 audio transmission, by or in a physical vending es-  
10 tablishment”; and

11 (3) by adding after the semicolon at the end the  
12 following: “or

13 “(B) performance of a sample of a nondra-  
14 matic musical work or a sample of a sound re-  
15 cording by digital audio transmission, by or  
16 through a digital online service open to the pub-  
17 lic at large without any direct or indirect admis-  
18 sion charge, if—

19 “(i) the purpose of the performance is  
20 to promote the retail sale, distribution or  
21 license, by or through the service, of copies  
22 or phonorecords of the work, including by  
23 digital phonorecord delivery as defined in  
24 section 115(d)(1);

1 “(ii) the transmitting entity transmits  
2 the sample solely to the particular recipient  
3 requesting the transmission; and,

4 “(iii) the length of the sample does  
5 not exceed 30 seconds or, in the case of a  
6 sound recording of more than 5 minutes in  
7 duration, 10 percent of that sound record-  
8 ing not to exceed 60 seconds;”.

9 (b) DEFINITION OF PERFORMANCE.—Section 110 of  
10 title 17, United States Code, is amended by adding at the  
11 end the following: “For purposes of paragraph (7), a ‘per-  
12 formance’ includes a transmission made by a transmitting  
13 organization to or on behalf of a vending establishment  
14 or a digital online service.”.

15 **SEC. 3. EXEMPTION FOR EPHEMERAL RECORDINGS AND**  
16 **FOR MULTIPLE EPHEMERAL RECORDINGS.**

17 (a) EXEMPTION.—Section 112(a)(1) of title 17,  
18 United States Code, is amended—

19 (1) in subparagraph (A), by striking “made it,  
20 and” and inserting “made it and, except to facilitate  
21 transmission of the performance,”; and

22 (2) in subparagraph (C), by striking “public.”  
23 and inserting the following: “public, except that a  
24 transmission program as set forth in section  
25 114(d)(2)(B) or section 114(d)(2)(C)(iii) is not re-

1       quired to be destroyed by a transmitting organiza-  
2       tion entitled to a statutory license under section  
3       114(f).”.

4       (b) MULTIPLE EPHEMERAL RECORDINGS EXEMP-  
5       TION.—Section 112 of title 17, United States Code, is  
6       amended—

7               (1) by striking subparagraph (C) of subsection  
8       (e)(1) and redesignating subparagraph (D) as sub-  
9       paragraph (C);

10              (2) by redesignating subsection (f) as sub-  
11       section (g);

12              (3) by adding after subsection (e) the following:

13       “(f) Notwithstanding the provisions of section 106,  
14       and except in the case of a motion picture or other audio-  
15       visual work, it is not an infringement of copyright for a  
16       transmitting organization entitled to transmit to the pub-  
17       lic a performance or display of a work, under a license,  
18       including a statutory license under section 114(f), or  
19       transfer of the copyright or under the limitations on exclu-  
20       sive rights in sound recordings specified by section 114(a)  
21       or for a transmitting organization that is a broadcast  
22       radio or television station licensed as such by the Federal  
23       Communications Commission and that makes a broadcast  
24       transmission of a performance of a sound recording in a  
25       digital format on a nonsubscription basis, to make one or

1 more copies or phonorecords of a work included in a sound  
2 recording, if—

3 “(1) each copy or phonorecord is retained and  
4 used solely by the transmitting organization that  
5 made it; and

6 “(2) each copy or phonorecord is used solely for  
7 the transmitting organization’s own transmissions  
8 within its local service area, or for purposes of archi-  
9 val preservation or security.”

10 **SEC. 4. LICENSING FOR TRANSMISSION.**

11 (a) STATUTORY PERFORMANCE LICENSE PAY-  
12 MENTS.—Subsection (g) of section 114 of title 17, United  
13 States Code, is amended—

14 (1) by striking paragraph (2), and

15 (2) by adding after paragraph (1) the following:

16 “(2) Receipts from the statutory licensing of  
17 public performances of sound recordings by digital  
18 audio transmission in accordance with subsection (f)  
19 shall be allocated and paid in the following manner:

20 “(A) 45 percent of the receipts shall be  
21 paid, on a per sound recording basis, to the re-  
22 cording artist or artists featured on such sound  
23 recording or to a designated collection and dis-  
24 tribution organization on behalf of such fea-  
25 tured recording artist or artists.

1           “(B) 2.5 percent of the receipts shall be  
2           deposited in an escrow account managed by an  
3           independent administrator jointly appointed by  
4           copyright owners of sound recordings and the  
5           American Federation of Musicians (or any suc-  
6           cessor entity) to be distributed to nonfeatured  
7           musicians (whether or not such musicians are  
8           members of the American Federation of Musi-  
9           cians) who have performed on sound recordings.

10           “(C) 2.5 percent of the receipts shall be  
11           deposited in an escrow account managed by an  
12           independent administrator jointly appointed by  
13           copyright owners of sound recordings and the  
14           American Federation of Television and Radio  
15           Artists (or any successor entity) to be distrib-  
16           uted to nonfeatured vocalists (whether or not  
17           such vocalists are members of the American  
18           Federation of Television and Radio Artists) who  
19           have performed on sound recordings.

20           “(D) 50 percent of the receipts shall be  
21           paid to a designated collection and distribution  
22           organization on behalf of the copyright owner of  
23           the exclusive right under section 106(6) of this  
24           title to perform publicly the sound recording by  
25           means of digital audio transmission under the

1 statutory license of subsection (f) of this sec-  
2 tion.”.

3 (b) LICENSING AFFILIATES.—

4 (1) IN GENERAL.—Subsection (h) of section  
5 114, title 17, United States Code, is amended—

6 (A) by striking paragraphs (1) and (2) and  
7 inserting the following:

8 “(1) If the copyright owner of a sound record-  
9 ing licenses an affiliated entity the right to repro-  
10 duce the copyrighted work, to distribute the copy-  
11 righted work to the public by means of a digital pho-  
12 norecord delivery or to perform the copyrighted work  
13 publicly, the copyright owner shall make the licensed  
14 sound recording available on no less favorable terms  
15 and conditions to all bona fide entities that offer  
16 similar services, except that, if there are material  
17 differences in the scope of the requested license with  
18 respect to the type of service, the particular sound  
19 recordings licensed, the frequency of use, the num-  
20 ber of subscribers served, or the duration, then the  
21 copyright owner may establish different terms and  
22 conditions for such other services, that such dif-  
23 ferent terms and conditions—

1           “(A) shall be limited to, and shall accu-  
2           rately reflect any such material differences in  
3           the scope of the requested license; and

4           “(B) permitted under this paragraph, shall  
5           be made available to all bona fide entities that  
6           offer similar services.

7           “(2)(A) Except as provided in subparagraph  
8           (B), a copyright owner that licenses a sound record-  
9           ing pursuant to paragraph (1) shall not mandate as  
10          part of the terms and conditions of the license that  
11          the licensee use any particular digital rights man-  
12          agement technology.

13          “(B) A copyright owner described in subpara-  
14          graph (A) shall not be prevented from including in  
15          the license a requirement that the licensee imple-  
16          ment digital rights management technology that  
17          meets reasonable and nondiscriminatory perform-  
18          ance criteria the copyright owner has established to  
19          protect a right of a copyright owner under this title  
20          in a work or a portion thereof.

21          “(3)(A) Except as provided in subparagraph  
22          (B), a copyright owner that licenses a sound record-  
23          ing pursuant to paragraph (1) shall not mandate as  
24          part of the terms and conditions of the license that  
25          the licensee use any particular digital music player.



1           “(B) A copyright owner described in subpara-  
2           graph (A) shall not be prevented from including in  
3           the license a requirement that the licensee use a dig-  
4           ital music player that meets reasonable and non-  
5           discriminatory performance criteria the copyright  
6           owner has established.

7           “(4) ENFORCEMENT.—(A) The Attorney Gen-  
8           eral may investigate an alleged violation of this sub-  
9           section if an investigation begins not later than 2  
10          years after an alleged violation occurred.

11          “(B) If the date of an alleged violation is unknown,  
12          the Attorney General may investigate to determine the  
13          date of the alleged violation.

14          “(C) If the Attorney General determines that a viola-  
15          tion of this subsection has occurred, the Attorney General  
16          has the power to seek to enforce the requirements of this  
17          subsection through all appropriate means.

18          “(D) Nothing contained in this paragraph shall be  
19          construed to limit the authority of the Attorney General  
20          under any other provision of law.

21                 (2) DEFINITIONS.—Subsection (j) of section  
22          114 of title 17, United States Code, is amended—  
23                         (A) by amending paragraph (1) to read as  
24                         follows:

1           “(1) The term ‘affiliated entity’ means an enti-  
2           ty, other than an entity that wholly owns or is whol-  
3           ly owned by the licensor, engaging in digital audio  
4           transmissions covered by section 106(6) or digital  
5           phonorecord deliveries in which the licensor has any  
6           direct or indirect partnership or any ownership in-  
7           terest amounting to 5 percent or more of the out-  
8           standing voting or nonvoting stock.”;

9                   (B) by redesignating paragraphs (6)  
10           through (15) as paragraphs (9) through (18),  
11           respectively;

12                   (C) by inserting after paragraph (5) the  
13           following:

14           “(6) The term ‘digital music player’ means a  
15           technology that renders audible the sounds in a  
16           sound recording embodied in a digital audio trans-  
17           mission or a digital phonorecord delivery.

18           “(7) The term ‘digital phonorecord delivery’  
19           shall have the meaning given such term in section  
20           115(d)(1).

21           “(8) The term ‘digital rights management tech-  
22           nology’ means a technological measure used to limit  
23           the uses of copyrighted work to those authorized by  
24           the copyright owner or the law.”.

1 **SEC. 5. ELECTRONIC ADMINISTRATION OF THE COMPUL-**  
2 **SORY LICENSE FOR MAKING AND DISTRIB-**  
3 **UTING SOUND RECORDINGS.**

4 (a) NOTICE OF INTENTION.—Section 115(b) of title  
5 17, United States Code, is amended—

6 (1) by striking paragraph (1) and inserting the  
7 following:

8 “(1) NOTICE.—(A) Any person who wishes to  
9 obtain a compulsory license under this section shall  
10 do so by serving a notice of intention to make and  
11 distribute phonorecords of the work.

12 “(B) Such notice may be given by direct notice  
13 served upon the copyright owner or by constructive  
14 notice that does not identify the copyright owner  
15 and that is to be served upon the Copyright Office.

16 “(C) Notice shall be served before or within 30  
17 days after making, and before distributing, any  
18 phonorecords of the work, except that a notice of in-  
19 tention to make digital phonorecord deliveries shall  
20 be made within 30 days after enactment of this Act  
21 or before the making of a digital phonorecord deliv-  
22 ery of the work, whichever is later.

23 “(D) Any notice of intention may identify more  
24 than one work and a constructive notice also may  
25 identify a work by one or more copyright owners.

1           “(E) The notice shall comply, in form, content,  
2           and manner of service, with requirements that the  
3           Register of Copyrights shall prescribe by regula-  
4           tion.”;

5           (2) by redesignating paragraph (2) as para-  
6           graph (3); and,

7           (3) by inserting after paragraph (1) the fol-  
8           lowing:

9           “(2) ROYALTY FEES.—Any person who obtains  
10          a compulsory license under this section shall—

11           “(A) pay royalty fees in accordance with  
12           subsection (c); or

13           “(B) if such royalty fees have not been de-  
14           termined, agree to pay such royalty fees as  
15           shall be determined in accordance with sub-  
16           section (c).”;

17           (4) in paragraph (3), as redesignated, by insert-  
18           ing “or (2)” after “(1)”.

19          (b) LIMITED DIGITAL PHONORECORD DELIVERY.—  
20          Section 115(c) of title 17, United States Code, is  
21          amended—

22           (1) in paragraph (3)—

23           (A) in subparagraph (C) by striking “and  
24           (ii)” and inserting “(ii) limited digital phono-  
25           record deliveries, and (iii)”;

1 (B) in subparagraph (D)—

2 (i) by striking “and (ii)” and inserting  
3 “(ii) limited digital phonorecord deliveries,  
4 and (iii)”;

5 (ii) by inserting after “as provided in  
6 subparagraphs (B) and (C).” the following:  
7 “In setting royalty rates and terms for lim-  
8 ited digital phonorecord deliveries under  
9 this section, the copyright arbitration roy-  
10 alty panel also shall consider the limita-  
11 tions imposed upon the use of the limited  
12 digital phonorecord delivery by a trans-  
13 mission recipient in proportion to digital  
14 phonorecord deliveries in general, the ex-  
15 tent to which limited digital phonorecord  
16 deliveries may promote or may substitute  
17 for the sales of phonorecords or otherwise  
18 may enhance or may interfere with the  
19 copyright owner’s other streams of revenue  
20 from its nondramatic musical works, and  
21 the proportion of the revenue received by  
22 the compulsory licensee from every such  
23 act of distribution of the phonorecord  
24 under this clause equal to the proportion  
25 of the revenue received by the compulsory

1 licensee from distribution of a general dig-  
2 ital phonorecord delivery that is payable by  
3 a compulsory licensee under clause (2) and  
4 under chapter 8.”;

5 (4) by inserting in paragraph (5) after “next  
6 preceding.” the following: “Payments for digital pho-  
7 norecord deliveries shall be made to the copyright  
8 owner or, if the notice of intention has been served  
9 upon the Copyright Office, to either the copyright  
10 owner or the Copyright Office.”

11 (5) by inserting in paragraph (6) after “copy-  
12 right owner” the following: “or, pursuant to para-  
13 graph (5) the Copyright Office,”.

14 (c) DEFINITIONS.—Section 115(d) of title 17, United  
15 States Code, is amended—

16 (1) by striking the paragraph heading and in-  
17 serting “DEFINITIONS.—”

18 (2) by striking “term has the following mean-  
19 ing” and inserting “terms have the following mean-  
20 ings”;

21 (3) by inserting after “meanings:” the fol-  
22 lowing: “(1)”;

23 (4) by inserting after paragraph (1) as so des-  
24 ignated the following:

1           “(2) A ‘limited digital phonorecord delivery’ is  
2           a digital phonorecord delivery that uses a technology  
3           that restricts the time or manner in which the trans-  
4           mission recipient may render such sound recording  
5           audible.”.

6           (d) ELECTRONIC FILING AND NOTICE TO COPY-  
7           RIGHT OWNERS.—

8           (1) DUTIES OF REGISTER.—Not later than 120  
9           days after the date of enactment of this Act, the  
10          Register of Copyrights shall—

11                (A) establish procedures by which the no-  
12                tice of intention may be served electronically  
13                upon the Copyright Office, and by which rea-  
14                sonable notice of the filing of a notice of inten-  
15                tion may be given to the owner of copyright in  
16                the nondramatic musical work;

17                (B) prescribe by regulation the require-  
18                ments for the form, content, and manner of  
19                electronic service of the notice, including notices  
20                that identify one or more works of a particular  
21                copyright owner and notices that identify one or  
22                more works of numerous copyright owners; and

23                (C) prescribe regulations for the appoint-  
24                ment of a designated agent to receive royalty  
25                fees and statements of account, to distribute

1 royalty fees to the copyright owner, and to ad-  
2 minister royalty fees that have been submitted  
3 for unknown copyright owners.

4 (2) REGULATIONS.—The Register of Copyrights  
5 may prescribe regulations whereby royalty fees are  
6 paid to an escrow account at the last established  
7 rate in which the terms and rates for the then-cur-  
8 rent period have not been determined, including for  
9 the period prior to the date of enactment of this Act.

10 **SEC. 6. LIMITATIONS ON EXCLUSIVE RIGHTS: INCIDENTAL**  
11 **AND ARCHIVAL COPYING.**

12 (a) TITLE.—The title heading of section 117 of title  
13 17, United States Code, is amended to read as follows:

14 **“SEC. 117. LIMITATIONS ON EXCLUSIVE RIGHTS: COM-**  
15 **PUTER PROGRAMS AND DIGITAL COPIES.”;**

16 (b) DIGITAL COPIES.—Section 117 of title 17, United  
17 States Code, is amended—

18 (1) by redesignating subsection (d) as sub-  
19 section (f), and

20 (2) by inserting after subsection (c) the fol-  
21 lowing:

22 “(d) Notwithstanding the provisions of section 106,  
23 it is not an infringement to make or to authorize the mak-  
24 ing of a copy or phonorecord of a sound recording or a  
25 work included in a sound recording, in a digital format,



1 provided that such copy or phonorecord is created by and  
2 is incidental to the operation of a device in the ordinary  
3 course of the use of a work otherwise lawful under this  
4 title.

5 “(e) Notwithstanding the provisions of section 106,  
6 it is not an infringement for the owner of a phonorecord  
7 lawfully acquired by digital phonorecord delivery, or a copy  
8 lawfully acquired by digital transmission of a literary work  
9 embodied in that phonorecord, to make or authorize the  
10 making of another phonorecord or copy of such works, if  
11 such new phonorecord or copy is for archival purposes only  
12 and that all archival phonorecord or copies are destroyed  
13 in the event that continued possession of the phonorecord  
14 or copy should cease to be rightful.”.

15 **SEC. 7. EVALUATION OF IMPACT OF CERTAIN STATUTORY**  
16 **PERFORMANCE LICENSE CRITERIA ON PRO-**  
17 **GRAMMING SERVICES.**

18 (a) EVALUATION BY THE REGISTER OF COPY-  
19 RIGHTS.—The Register of Copyrights, in consultation with  
20 the Assistant Secretary of the Office of Technology Policy  
21 of the Department of Commerce, shall evaluate the effects,  
22 under the statutory sound recording performance license  
23 set forth in section 114(d)(2) of title 17, United States  
24 Code, upon preexisting and emerging noninteractive dig-  
25 ital audio transmission services of the criteria set forth

1 in sections 114(d)(2)(B) and 114(d)(2)(C)(i) and (ii) of  
2 such title, with respect to—

3 (1) the economic costs of compliance with the  
4 criteria;

5 (2) the effect of compliance with the criteria  
6 upon the nature of the programming and the mar-  
7 ketability of such services;

8 (3) whether any noninteractive digital audio  
9 transmission service would be unable to comply with  
10 the criteria and, therefore, to qualify for the statu-  
11 tory license;

12 (4) whether any changes to the criteria, includ-  
13 ing the elimination thereof, would enable additional  
14 noninteractive digital audio transmission services to  
15 qualify for the statutory license; and

16 (5) the likely impact upon copyright owners of  
17 sound recordings of any such changes to the criteria.

18 (b) REPORT TO CONGRESS.—The Register of Copy-  
19 rights shall, not later than 12 months after the date of  
20 enactment of this Act, submit to the Congress a report  
21 on the evaluation conducted under subsection (a), includ-  
22 ing any legislative recommendations the Register may  
23 have.